



TC03995

Appeal number: TC/2013/09339

VAT – late appeal – application made years late – no reasonable prospect of success – no extension of time granted – ESC A19 does not apply to VAT – appeal not admitted.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LINDSAY JAMES SCOTT t/a SCOTT FURNISHERS Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE BARBARA KING
MR WARREN SNOWDON**

Sitting in public at Carlisle on 25 July 2014

The Appellant appeared in person

Barry Sellers of HM Revenue and Customs, for the Respondents

DECISION on PRELIMINARY ISSUE

The Issue

1. The issue in this appeal was whether the Tribunal was prepared to extend time to allow the appellant “Mr Scott”, to appeal against default surcharges of £245.13, £45.66 and £74.20 imposed by the respondents “HMRC” in respect of the late payment of VAT for the quarters 09/07, 12/07 and 03/08.
2. The time limit for appealing against these surcharges was 30 days after the dates of the surcharge notices, which were 11 January 2008, 19 February 2008 and 16 May 2008.

10 *The Law*

3. Mr Scott referred to Extra Statutory Exception “ESC A19”, which gives HMRC a discretion not to collect certain underpaid tax. Mr Scott had not read “ESC A19” in full but a copy was obtained by the Tribunal and it was found to relate only to Income Tax, Capital Gains Tax and National Insurance contributions. It does not relate to VAT. In any event there is no right of appeal against a decision by HMRC not to exercise its discretion under “ESC A19”.
4. The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 governs the powers of the Tribunal to extend time under rule 5 and to admit late appeals under rule 20. Both rules are subject to the over-riding objective in rule 2 that the Tribunal must deal with cases fairly and justly.

Evidence and Discussion

5. Mr Scott completed a Notice of Appeal on 1 November 2013. In this notice Mr Scott referred to a sum which included VAT due from his VAT returns for various periods, in addition to the default surcharges.
6. There is no right of appeal against the actual amounts of VAT due. Mr Scott has completed VAT returns showing that these sums are due. Mr Scott sought to argue that HMRC were ‘out of time’ to collect these sums and / or that he might have paid these sums at an earlier date.
7. HMRC produced a schedule to show that VAT due for the periods 06/07, 09/07 and 03/08 had been paid by instalments throughout 2012 and 2013.
8. Mr Scott produced a copy of a calculation made by a VAT compliance officer on 27 June 2012 which showed an amount of £4358 VAT plus interest of £368.38 due as at that date. Mr Scott thought that this showed that this calculation covered all of the VAT owed by him over a number of years. The letter dated 27 June 2012 from the officer indicates that she was investigating only the tax years ended 5 April 2009 and 5 April 2010. On 27 June 2012 the figure of £4726.38 has been added to the statement of VAT due from Mr Scott. It does not replace what was already owed.

9. The notice of appeal completed on 1 November 2013 did not seek to appeal the assessment made on 27 June 2012.

10. Mr Scott has kept no records as to when or whether he had paid these sums of VAT in 2007 and 2008. He agreed that he had been told to keep VAT records for six
5 years but then thought that after he had the visit of the compliance officer in June 2012 that he did not need to keep any records from before that date. There was no written evidence to show that Mr Scott had been told he could destroy his records from before 2012.

11. The evidence from HMRC was that Mr Scott had been in the default regime
10 since 2005. He was liable to a 15% surcharge on any defaults from the period ending 06/06 onwards. The ledger balance of amounts due from Mr Scott includes VAT due on his returns, default surcharges and interest over a long period.

12. Mr Scott was aged 68 at the date of his appeal. He did not seek to give any
15 evidence that he has had any health issues which have delayed his payments. He is still running a business which is subject to VAT. His handling of paperwork is not good but he could obtain paid assistance if necessary.

13. The allocation of all payments made by Mr Scott since 2007 is not a matter
20 which can be adjudicated on by this Tribunal. Mr Scott has no records as to how he wished any of his payments to be allocated. HMRC has kept records showing that the amounts due on the VAT returns for 09/07, 12/07 and 03/08 were not made until 2012 and 2013. At the hearing Mr Scott accepted that the weight of evidence is against him, that he has no arguable case and will have to pay the penalties.

Decision

14. The appeal has been sent in many years late and the appellant has had ample
25 time in which to show that he has an arguable case. He has not done so. We find that Mr Scott has no realistic chance of success and it is not in the interests of justice to extend time for the appeal.

15. The appeal is not admitted.

16. This document contains full findings of fact and reasons for the preliminary
30 decision. Any party dissatisfied with this preliminary decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax
35 Chamber)” which accompanies and forms part of this decision notice.

**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 10 September 2014